

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 202107236	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/02/2021 11:25 PM	Location of Incident: In the vicinity of East Tremont Avenue and Park Avenue (East Tremont Metro North entrance)	Precinct: 48	18 Mo. SOL 5/2/2023	EO SOL 5/2/2023	
Date/Time CV Reported Sun, 11/28/2021 11:18 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 11/28/2021 11:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Jason Garcia	18851	967885	048 PCT
2. PO Nicole Krauss	03187	961535	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Jason Garcia	Abuse: Police Officer Jason Garcia stopped the vehicle in which § 87(2)(b) was an occupant.	
B. PO Nicole Krauss	Abuse: Police Officer Nicole Krauss stopped the vehicle in which § 87(2)(b) was an occupant.	
C. PO Jason Garcia	Abuse: Police Officer Jason Garcia questioned § 87(2)(b)	
D. PO Jason Garcia	Abuse: Police Officer Jason Garcia failed to provide § 87(2)(b) with a business card.	
E. PO Jason Garcia	Discourtesy: Police Officer Jason Garcia spoke discourteously to § 87(2)(b)	
F. PO Jason Garcia	Abuse: Police Officer Jason Garcia threatened § 87(2)(b) with the use of force.	
G. PO Jason Garcia	Discourtesy: Police Officer Jason Garcia spoke discourteously to § 87(2)(b)	
H. PO Jason Garcia	Discourtesy: Police Officer Jason Garcia acted discourteously toward § 87(2)(b)	
I. PO Nicole Krauss	Discourtesy: Police Officer Nicole Krauss acted discourteously toward § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On November 28, 2021, § 87(2)(b) filed this complaint with the CCRB online.

On November 2, 2021, § 87(2)(b) was in the passenger's seat of a vehicle operated by his girlfriend, § 87(2)(b). § 87(2)(b) drove through a yellow light at the intersection of East Tremont Avenue and Park Avenue in the Bronx. PO Jason Garcia and PO Nicole Krauss of the 48th Precinct used their lights and siren to pull § 87(2)(b) over (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) pulled over toward the middle of the block ahead of the intersection. PO Garcia and PO Krauss approached § 87(2)(b) vehicle. PO Garcia questioned § 87(2)(b) asking her whether there were any weapons, drugs, or explosives in the car. He also asked whether he could search the vehicle. § 87(2)(b) declined the officer's request (**Allegation C: Abuse of Authority**, § 87(2)(g)). PO Garcia failed to provide § 87(2)(b) with a business card at the end of the vehicle stop (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Garcia told § 87(2)(b) "Next time, bro, there's no reason to be an asshole" (**Allegation E: Discourtesy**, § 87(2)(g)). As PO Garcia walked away from the vehicle, he allegedly threatened to use physical force against § 87(2)(b) and allegedly told § 87(2)(b) that he would "fuck [him] up" (**Allegation F: Abuse of Authority**, § 87(2)(g) and **Allegation G: Discourtesy**, § 87(2)(g)). When § 87(2)(b) was driving away, PO Garcia and PO Krauss from their vehicle allegedly displayed their middle fingers to § 87(2)(b) (**Allegations H and I: Discourteous Action**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) and § 87(2)(b) were not issued summonses or arrested during the incident.

The investigation obtained body-worn camera (BWC) footage from PO Garcia and PO Krauss.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jason Garcia stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Nicole Krauss stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) was driving a white § 87(2)(b) (all its windows were tinted) that belonged to her mother, § 87(2)(b) who works for the NYPD's communications division. Sitting in the front passenger's seat was her boyfriend, § 87(2)(b). From Webster Avenue, she made a right onto East Tremont Avenue. § 87(2)(b) drove through a yellow light and passed by the entrance to the Metro North Station, which was also located on East Tremont Avenue. A marked SUV was parked in front of this entrance. Within a minute of § 87(2)(b) driving through the yellow light, the officers used their vehicle's lights to pull her over. She pulled over toward the middle of the block across the street from the East Tremont station and put her vehicle into park, leaving the engine on. PO Garcia approached the driver's side while PO Krauss approached the passenger's side. PO Garcia asked if § 87(2)(b) if she knew why she was pulled over. § 87(2)(b) said that she did not know why. PO Garcia asked § 87(2)(b) whether she knew she ran a red light. Toward the end of the vehicle stop, § 87(2)(b) told PO Garcia to have a good night [**Board Review 01**].

Although the investigation obtained an unverified statement from § 87(2)(b) he failed to appear for his scheduled interview and failed to respond to subsequent attempts to reschedule the interview. In his unverified statement, § 87(2)(b) stated that PO Garcia and PO Strauss stopped § 87(2)(b) for allegedly running a red light which she did not do. The officers did not issue § 87(2)(b) a summons [**Board Review 16**].

PO Garcia and PO Krauss testified that they observed § 87(2)(b) vehicle traveling eastbound on East Tremont Avenue. At the time the officers observed § 87(2)(b) vehicle,

drugs, alcohol, or marijuana in the vehicle. In addition, there were no weapons, firearms, or bombs in the vehicle [Board Review 16, 17].

PO Garcia testified that at the driver's side, he saw bags in the vehicle. He asked for § 87(2)(b) NYS driver's license, registration, and proof of insurance. He did not observe any evidence of weapons. He did not recall smelling any odors from the vehicle. The street conditions were semi-lit by the street poles. Without his flashlight, PO Garcia would not be able to see into the backseat area to the vehicle's heavily tinted windows. During their initial conversation by the driver's side, § 87(2)(b) appeared nervous: her hands were trembling, and she was moving her legs and stuttering her answers as PO Garcia spoke to her. In addition, § 87(2)(b) kept looking back at her passenger, § 87(2)(b). After § 87(2)(b) provided her documentation to PO Garcia, he returned to his vehicle and conducted a check of her documents. His search did not yield any active warrants.

PO Garcia returned to § 87(2)(b) vehicle and spoke to her again at the driver's side. He asked her whether she had any weapons, firearms, bombs, drugs, or anything illegal in the vehicle. PO Garcia explained that he typically asks this question during vehicle stops for his safety. He further explained that the question was non-accusatory, and his question was based on § 87(2)(b) initial movements and § 87(2)(b) continuous fumbling movements, which he noticed when he returned to her vehicle. § 87(2)(b) was continuously placing his hands on the immediate area of the floor by the passenger's side. He appeared nervous due to his hand movements. PO Garcia did not recall how long § 87(2)(b) was moving his hands and did not recall him reaching for any other area. PO Garcia could not see what § 87(2)(b) was fumbling with, so he instructed him to place his hand on the dashboard once. PO Krauss also instructed § 87(2)(b) to not move and place his hand on the dashboard. § 87(2)(b) did not immediately comply with the command, but he did place his hands on the dashboard. PO Garcia did not suspect either § 87(2)(b) or § 87(2)(b) of any criminality. He did not issue her a summons [Board Review 02].

PO Krauss largely corroborated PO Garcia's testimony. She heard PO Garcia ask § 87(2)(b) whether she had bombs, guns, or drugs in the vehicle. § 87(2)(b) appeared nervous due to her tone, and she was taking her time to answer questions. As PO Krauss stood by the passenger's side, she observed § 87(2)(b) moving and fidgeting throughout the vehicle stop. He kept placing his left hand on his pant leg, which PO Krauss considered a safety concern because § 87(2)(b) could have had a weapon on him. PO Krauss did not see any evidence of weapons in the vehicle. § 87(2)(b) reached down. She did not know what he was reaching for. PO Garcia and PO Krauss instructed § 87(2)(b) to place his hands on the dashboard [Board Review 03].

According to People v. Hollman, 79 N.Y.2d 181 (1992), an officer must have founded suspicion that criminal activity is afoot to ask accusatory questions [Board Review 06].

In People v. Garcia, 20 N.Y.3d 317 (2012), officers stopped a vehicle for a defective rear brake light. As they approached the vehicles, the officers observed its four passengers making furtive movements and appearing nervous. One of the officers asked the occupants whether they possessed weapons. The Court held that when questioning becomes more pointed and an officer seeks information about an individual's wrongdoing that goes beyond the reason for the traffic stop, said officer must have founded suspicion that criminal activity is afoot. It is also noted that the framework in People v. Hollman applies to traffic stops [Board Review 18].

The officers and § 87(2)(b) indicated that after § 87(2)(b) was pulled over for allegedly running a red light, PO Garcia asked whether she had any weapons, explosives, drugs, or illegal items in the vehicle. BWC footage captures § 87(2)(b) leaning forward, adjusting his seat, and touching his pants and face. Other than § 87(2)(b) body movements and § 87(2)(b) nervous demeanor, they did not display any other behavior that would have led PO Garcia to believe that criminality was afoot.

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Jason Garcia failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated that PO Garcia did not provide her with a business card at the conclusion of the vehicle stop [Board Review 01].

In his unverified telephone statement, § 87(2)(b) stated that § 87(2)(b) did not receive a business card [Board Review 16].

PO Garcia testified that he did not offer a business card to § 87(2)(b). He offered her a professional courtesy because her mother works for the NYPD. Furthermore, neither § 87(2)(b) nor § 87(2)(b) asked for a business card [Board Review 02].

NYPD Administrative Guide 304-11 provides members of service guidelines on compliance with the Right to Know Act (RTKA). During situations involving noncustodial questioning of individuals suspected of criminal activity, police officers must otherwise provide a business card to them [Board Review 07].

Given that PO Garcia asked § 87(2)(b) pointed accusatory questions, as discussed in Allegation C, during a vehicle stop in which no summonses were issued, § 87(2)(g)

Allegation (E) Discourtesy: Police Officer Jason Garcia spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Jason Garcia threatened § 87(2)(b) with the use of force.

Allegation (G) Discourtesy: Police Officer Jason Garcia spoke discourteously to § 87(2)(b)

BWC footage from PO Garcia captures his conversation with § 87(2)(b) toward the end of the vehicle stop. After PO Garcia tells § 87(2)(b) that they are free to go, from 7:09 to 7:18, PO Garcia states, “Next time, bro, there’s no reason to be an asshole. No reason.” § 87(2)(b) says, “Have a good night.” PO Garcia tells him to have a good night. As PO Garcia walks away from the vehicle, PO Garcia turns to § 87(2)(b) vehicle and says, “What happen?” PO Garcia deactivates his BWC. PO Garcia’s footage does not capture any other profanity or any threat of force to § 87(2)(b) [Board Review 04].

BWC footage from PO Krauss captures PO Garcia saying, “Next time bro. No need to be an asshole” at the 7:07 mark. Her footage does not capture any other profanity used by PO Garcia or any threat of force [Board Review 05].

§ 87(2)(b) stated that toward the end of the vehicle stop, § 87(2)(b) told PO Garcia to have a good night and stay safe. Something occurred between PO Garcia and § 87(2)(b) § 87(2)(b) was not sure what happened between them. PO Krauss, who was by the passenger’s side, did not say anything. PO Garcia, as he was walking back to his vehicle and in the middle of one of the lanes, looked back and pulled up his pants. He said something along the lines of, “Oh, we can get down right now if you wanted to,” which seemed threatening and as though he wanted to fight § 87(2)(b) § 87(2)(b) heard PO Garcia say to § 87(2)(b) “I can fuck you up.” She did not recall what led to PO Garcia saying that remark. She did not hear any other profanity. § 87(2)(b) was reaching his head over to get a closer look at PO Garcia from the driver’s side. He kept his hand on the dashboard and did not do anything else. PO Garcia went back into his vehicle [Board Review 01].

In his unverified statement, § 87(2)(b) stated after the officers let § 87(2)(b) go, PO Krauss called § 87(2)(b) an “asshole.” PO Garcia then told § 87(2)(b) “Hey, buddy do you want to keep going? I can pull you out of the car, and we can make this an issue.” § 87(2)(b) told PO Garcia, “Oh, wow. Now you’re threatening me.” § 87(2)(b) told PO Garcia that he would file a complaint, to which PO Garcia said that he “did not give a fuck” [Board Review 16].

The investigation was unable to obtain an interview statement from § 87(2)(b).

PO Garcia acknowledged telling § 87(2)(b) “Next time, bro, there’s no reason to be an asshole,” which PO Garcia explained was due to § 87(2)(b) continuous movements and failure to follow his orders. PO Garcia denied telling § 87(2)(b) “I can fuck you up” and denied threatening § 87(2)(b) with physical force [Board Review 02].

PO Krauss confirmed that PO Garcia told § 87(2)(b) “Next time, bro, there’s no reason to be an asshole.” PO Krauss did not hear PO Garcia tell § 87(2)(b) “Oh, we can get down right now if you want to.” PO Krauss did not hear § 87(2)(b) say, “I can fuck you up.” PO Krauss did not hear PO Garcia threaten to pull § 87(2)(b) out of the vehicle [Board Review 03].

NYPD Patrol Guide Procedure 200-02 indicates that members of service must value human life, respect the dignity of each individual and render their services with courtesy and civility [Board Review 08]. DAO-DCT Case Number 2018-18951 states that profane remarks, made during stressful, violent confrontations or while an officer is trying to gain control of a chaotic situation, are not misconduct [Board Review 09].

PO Garcia acknowledged telling § 87(2)(b) “Next time, bro, there’s no reason to be an asshole” during a situation that was neither chaotic nor stressful: PO Garcia had concluded the vehicle stop and was walking away § 87(2)(g).

Although § 87(2)(b) stated that PO Garcia threatened to remove § 87(2)(b) from the vehicle, PO Garcia denied threatening § 87(2)(b) with the use of physical force and denied telling § 87(2)(b) that he would “fuck [him] up.” § 87(2)(g)

Allegation (H) Discourtesy: Police Officer Jason Garcia acted discourteously toward § 87(2)(b).

Allegation (I) Discourtesy: Police Officer Nicole Krauss acted discourteously toward § 87(2)(b).

BWC footage from PO Garcia and PO Krauss does not capture these allegations [Board Review 04, 05].

§ 87(2)(b) stated after the vehicle stop had concluded, she drove away from the officers first. PO Garcia, who was driving the officers’ vehicle, sped up behind § 87(2)(b) vehicle, following her for one or two blocks. PO Garcia moved to the lane on the passenger’s side of her vehicle. § 87(2)(b) displayed his middle finger at the officers. PO Garcia and PO Krauss, using their left hands, extended their middle fingers at § 87(2)(b) § 87(2)(b) and the officers screamed unspecified statements at each other. At the intersection of East Tremont and Third Avenue, PO Garcia made right while § 87(2)(b) made a left [Board Review 01].

In his unverified statement, § 87(2)(b) stated after the officers let § 87(2)(b) go, § 87(2)(b) drove off. When she reached a red light, the officers’ vehicle sped up from behind and went by the passenger’s side. PO Krauss raised her middle finger at § 87(2)(b) [Board Review 16].

PO Garcia testified that he drove away and returned to his command to end his tour. He did not recall whether § 87(2)(b) drove away first. PO Garcia did not recall extending his middle finger at § 87(2)(b) after both vehicles drove away from the scene. He did not recall PO Krauss extending her middle finger at § 87(2)(b) during the entirety of the incident [Board Review 02].

PO Krauss corroborated PO Garcia’s statement. Neither she nor PO Garcia extended their middle fingers at § 87(2)(b) [Board 03].

Although § 87(2)(b) claimed that the officers displayed their middle fingers to § 87(2)(b) as she and the officers were driving, PO Garcia and PO Krauss denied doing so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [Board Reviews 11, 12].
- PO Garcia has been a member of service for two years and has been a subject in five CCRB complaints and 17 allegations. These allegations are under active investigation.
- PO Krauss has been a member of service for five years and has been in a subject in five cases and 11 allegations.
 - Case # 201707396 involved allegations of Physical Force and Entry of Premises, which were closed Pending Litigation.
 - Case # 202102582 involved allegations of Entry of Premises and Physical Force. These allegations are awaiting Board review.
 - PO Krauss' remaining cases are under active investigation. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- At the time this complaint was received, mediation was not being offered to civilians because the mediation unit was not receiving cases.
- As of April 1, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident [Board Review 13].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 11

Investigator: _____ Inv. Mike Talisayan 12/01/2022
Signature Print Title & Name Date

Squad Leader:	<u>Edwin Pena</u>	<u>IM Edwin Pena</u>	<u>12/01/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date